



## [Expropriation of Land without Compensation - Constitutional Amendments](#)

The [public had until the end of January 2020](#) to comment on the [“Constitution Eighteenth Amendment Bill”](#) that makes it explicit that *“where land and any improvements thereon are expropriated for the purposes of land reform, the amount of compensation payable may be nil.”*

As the Constitution stands at the moment, without any amendments, it does not prevent courts deciding that compensation for expropriation could be nil (or less than market value or any other amount). The wording in the Constitution Eighteenth Amendment Bill simply makes this explicit. The Bill calls on government to set out, in legislation, the *“specific circumstances where a court may determine that the amount of compensation is nil”*.

As always, the ‘devil’ is in the details. These details can be found in the [Draft Expropriation Bill of 2019](#) that actually came out more than a year ago in December 2018, where it lists, in section 12.3, five instances where compensation could be nil. Generally it could be argued that only one of these instances is controversial. Section 12.3.b states that one of the instances where nil compensation may be just and equitable is *“where the land is held for purely speculative purposes.”* The controversy revolves around the question: who decides and how do they decide if the land is being held for purely speculative purposes?

Land speculation is where people obtain land ‘cheaply’ with the intention of holding on to the land for a period of time until they can sell it at a later date at a higher price and make a nice profit. See [here](#) for the Wikipedia definition of speculation and [here](#) for a few other people’s views on what land speculation is all about. Most property developers, investment companies, and property owners speculate on land all the time so it is bound to be very difficult to draw the line as to when is land held *“for purely speculative purposes”* and when is land speculation just one of the reasons for holding land. For example, if someone owns a piece of land on the edge of a growing city and uses it to graze cattle, can this land be expropriated at nil compensation using the argument that what the present land owner is really doing is just speculating and waiting for a developer to approach them to buy the land at a high price to use for a new shopping centre or gated community?

The other four (far less controversial) instances listed in section 12.3 where it is suggested that compensation can be nil are: *“(a) [w]here the land is occupied or used by a labour tenant, as defined in the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); ... (c) where the land is owned by a state-owned corporation or other state-owned entity; (d) where the owner of the land has abandoned the land; (e) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.”*

We may have missed the opportunity to comment on Constitution Eighteenth Amendment Bill which calls on government to develop legislation making it explicit in which instances the courts can consider compensation to be nil. This amendment, however, is not the only place where the debate around land expropriation without compensation is to be had. We need to familiarise ourselves far more with the contents of the Draft Land Expropriation Bill, and familiarise ourselves with the arguments for and against the various proposed instances where it is suggested compensation can be nil.

Government needs to update us on what progress is being made in finalising a new Expropriation Bill so we can have meaningful discussions around when is it just and equitable for compensation to be nil.

Contact the Department of Public Works using the following methods (found in the original more than a year-old draft Land Expropriation Bill) to find out when a new draft Expropriation Bill will come out:

- Tel No: 012 406 2000/012 406 1315 /012 406 1567
- Facsimile: 086-272-4554
- E-mail: [ndou@dpw.gov.za](mailto:ndou@dpw.gov.za) / [johannes.lekala@dpw.gov.za](mailto:johannes.lekala@dpw.gov.za)
- For Attention: Livhuwani Ndou / Johannes Lekala